

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3638 OF 2005

Juhu Sameep Co-op.Hsg.Soc.Ltd. .. Petitioners

Vs.

Uday Kumar Mishra & Ors. .. Respondents

Mr.J.S.Kini with Mr.Deepak P.Thakre for the
petitioners

Mr.G.R.Dwiwedi for the respondent no.1

Mr.S.R.Chinchlikar for respondent no.2 to 4

CORAM : S.U.KAMDAR, J
DATED : 19TH NOVEMBER, 2005

P.C.:

1. The present petition is filed challenging the order passed by the Learned Deputy Registrar in Recovery Application No.373 of 2004. By the said order dt.11.3.05 the Revision Application has been dismissed. A short point which arises is whether respondent no.1 is liable to the petitioners which is a Co-op.Housing Society to pay towards the arrears of repair charges. According to the petitioner Co-operative Housing Society, the outstanding amount of the repair charges is

Rs.37,917/- and interest thereon.

2. In the earlier court proceeding this court appointed an auditor and the auditor has given its report. In the report of the auditor at item no.4 it has been shown that the respondent no.1 Mr.Uday Kumar Mishra is liable to make payment of Rs.72,337/- in respect of repair charges. In subsequent thereto the recovery proceeding were initiated. However, in the said section 101 proceeding the Registrar has passed an order refusing to grant certificate for recovery of amount on the ground that there is a discrepancy in approval of the repair work. It has been stated in the said order that the applicant society has not followed due and proper procedure for carrying out repairs and painting work by appointing architect for taking estimate thereof, placing the estimate before the Managing Committee and thereafter approval from the general body meeting and thereafter inviting tender and quotations and therefore it has been held that the respondent herein has rightly declined to make payment of the aforesaid amount. The aforesaid findings are

upheld in the impugned order in appeal.

3. In my opinion, the finding given by the Divisional Joint Registrar is unsustainable. Society is of 80 members. Almost all the members have paid repairs and renovation charges. Respondent no.1 cannot be permitted to raise such contention that he is not liable to make payment of repair charges on the basis of procedural defaults as mentioned by the Deputy Joint Registrar. Once the audit of the account has been effected pursuant to interim order passed by this court and the petitioner is liable to make payment of repair charges then in that event the necessary certificate ought to have been issued by the Recovery Officer. In my opinion, however if the member is permitted not to pay the repair charges to the Society then in that event the functioning and the affairs of the society would be grossly impaired and it would not be in the interest of all the members who are residing in the said society.

4. The learned counsel for the petitioners has further stated that the new managing committee is

already been elected and the new managing committee has also taken charge of all the affairs of the said society. In my opinion, the contention of the respondent no.1 that he will not make payment as demanded by the society towards the repair charges is illegal and unjustified and therefore impugned order passed by the authority is required to be quashed and set aside. The learned counsel for the respondent no.1 states that no repairs are carried out at all. On the other hand his client states that repairs are carried out and payment is made by cash and no proof is there.

5. Writ Petition no.3638 of 2005 is accordingly allowed. Impugned order passed by the authority dt.11.3.05 is quashed and set aside. In that view of the matter, I remand the matter back to the Deputy Registrar Co-op. Society to consider the application for issuance of the certificate u.s.101 after ascertaining the exact amount due and payable by respondent no.1 towards the repair charges payable to the said society.